

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
February 23, 2009**

Members Present:

Michael Gallagher
Paul Klein
Gene Camargo
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton Jr.
George Alejos
Mary Rogers
Andrew Ozuna
Mike Villyard

Staff:

Fernando De Leon, Assistant Director
Christopher Looney, Planning Manager
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Michael Farber, Planner
Paul Wendland City Attorney
Audrey Zamora, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

All members voted in the affirmative to move cases **A-09-014**, **A-09-018**, and **A-09-023** to the end of the agenda.

CASE NO. A-09-010

Applicant – Sioco Realty, L.L.C.

The northwest irregular 377.96 feet of Lot 11, Block 2, NCB 14702

9465 Huebner Road

Zoned: "C-2" Commercial District

The applicant is requesting a **1)** a 5-foot variance from the requirement that front-yard solid screen fences shall not exceed 3 feet in height, in order to erect an 8-foot tall solid-screen front-yard fence on the northeast property line, **2)** a 3-foot variance from the requirement that front-yard solid screen fences shall not exceed 3 feet in height, in order to keep an existing 6-foot tall solid-screen front-yard fence on the southwest property line, and **3)** a 2-foot variance from the requirement that side and rear-yard fences shall not exceed 6 feet in height, in order to erect an 8-foot tall side and rear-yard fence.

Michael Farber, Planner, presented background and staff's recommendation of approval of variance request #1 and #2 and denial of variance request #3. He indicated 13 notices were

mailed, one was returned in favor and two were returned in opposition and Oakland Estates Neighborhood Association is in support.

Andrew Guerrero, representative, stated they appeared before the Board in the December. He also stated they made an agreement with the neighborhood with association that the fence would not go beyond the drainage flood plain which is on the northeast property line. The applicant was required through his engineer to provide adequate drainage towards Leon Creek which made a grade difference in this case.

The following citizens appeared to speak:

Thomas Van Buskirk, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-010 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case No. **A-09-010**, the request being made by **Sioco Realty, L.L.C.**, on property known as **9465 Huebner Road**, also known as **the northwest irregular 377.96 feet of Lot 11, Block 2, NCB 14702**, be approved for the those variance requests numbered as **#1 and #3 being to retain a 6-foot fence that exists along the southwest property line save and except the front 25 feet and on item #1 also being a variance for an 8-foot fence within the front yard save and except the front 25 feet measured from Huebner Road which is as the applicant indicated. On item #2 which is for the erection of an 8-foot fence along the side property line of the northeast property line and within the rear yard of the northeast property line also be approved as per the site plan submitted by the applicant's representative which in fact shows the requested 8-foot fence to be shortly beyond the paved area behind the existing building for the following reasons. The limit of the distance of the 8-foot fence on the northeast property line towards the back which goes slightly past the parking area. Such variance will not be contrary to the public interest in that of the notices mailed initially there were two returned in opposition, one which is the adjacent property owner we have been told verbally no longer opposes, who would be the most affected property owner. Secondly the homeowners association in this area also has been briefed about the proposal and have submitted in writing a letter recommending approval of the request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that due to grade differential instances between the subject property and the property to northeast and coupled with what appears to be a nonconforming use on the adjacent property would provide visual protection to the new development that has occurred on the subject property. The spirit of the ordinance is observed and substantial justice is done in that neither of the properties to the northeast or the subject property or the southwest appear they would be damaged by the great investment and improvement that has been made on the property. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the property is zoned a "C-2" Commercial and the use that exists on the property is one permitted under the zoning regulations. Such variance will not**

substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **is so due to the topography that exists on this portion of Huebner Road which all slopes in a southwesternly direction and a northwesternly direction towards a flood plain, a creek, that lies to the rear of the property.** The plight of the owner of the property for which the variance is sought due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **as mentioned in the fact finding before due to the topography of this area it appears that the request is merit.** The motion seconded by Mr. Klein.

AYES: Camargo, Klein, Britton, Villyard, Victor, Ozuna, Alejos, Hardemon, Dutmer, Gallagher

NAY: Rogers

THE VARIANCE WAS GRANTED.

CASE NO. A-09-019

Applicant – Ricardo Trevino
Lot 25, Block 1, NCB 13356
230 East Ashley Road
Zoned: "R-4" Residential Single-Family District

The applicant is requesting a 2-foot variance from the requirement that predominantly open front-yard fences shall not exceed 4 feet in height, in order to keep an existing 6-foot tall predominantly open front-yard fence.

Michael Farber, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated that there were 42 notices mailed, 2 were returned in favor and one was returned in opposition and no response from Kimborough Ridge Neighborhood Association.

Ricardo Trevino, applicant, stated the reason for this request is for security. He also stated that there is bridge down the street where homeless sleep which jump his 4-foot fence. He stated there is also a school down the street which the kids from that school tend to jump his fence and throw trash in his yard after school. He further stated he has grandkids that play in the background and he is concerned for the safety if they would jump the fence into the drainage ditch.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-019 closed.

MOTION

A motion was made by **Mr. Klein**. Re appeal case No. **A-09-019**, this is a variance application for a **2-foot variance from the requirement that front-yard fences shall not exceed 4 feet in height, in order to keep an existing 6-foot tall predominantly open front-yard fence**, the subject property is known as **230 East Ashley Road**, more specifically **Lot 25, Block 1, NCB 13356**, it is zoned **"R-4" Residential Single-Family District**, the applicant is **Ricardo Trevino**. I move that the Board of Adjustment grant the applicant's request regarding this appeal, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **this particular piece of property is quite large, fronts on a busy street, as well it has significant frontage along a six mile creek that also occurs on the plain of the front yard where this fence is requested and that significant issues related to security and the proximity of the six mile creek with this property have been noted by the applicant**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **again the creek occurring in the front yard presents a very special condition with respect to this variance request**. The spirit of the ordinance is observed and substantial justice is done in that **this particular property as well as the fact that the applicant did apply for and receive a City of San Antonio building permit for a 6-foot fence was granted in December per the testimony that has been provided to the board today**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the property is located "R-4" Residential Single Family District and that is in fact the use of the property and this fence variance will not change that**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the most affected adjacent property is in fact a six mile creek and that has been judged to be a potential security threat to the applicant**. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant did in fact make an application with the City of San Antonio for a fence permit of 6-feet in height was granted that permit and in fact was primarily interested in safeguarding his property which adjoins a busy front street as well tying into that portion of the property that runs along a six-mile creek**. The motion seconded by **Ms. Dutmer**.

AYES: Klein, Dutmer, Villyard, Hardemon, Ozuna, Britton, Camargo, Victor, Alejos, Rogers, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.



Board members took a 10-minute recess.

CASE NO. A-09-021

Applicant – Dale Carse

Lot 10, Block 4, NCB 17851

15103 Huebner Road

Zoned: "C-3 ERZD" Commercial Edwards Recharge Zone District

The applicant is requesting a 2-foot variance from the requirement that predominantly open front-yard fences shall not exceed 4 feet in height, in order to erect a predominantly open fence to a height of 6 feet in the front yard.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 22 notices mailed, 1 was returned in favor and none were returned in opposition.

Chris Spriggs, representative, stated this project was constructed in 2000 as a backup data center for the downtown facility. It is currently being modified to handle future growth for HEB, it is a 24/7 facility, and there are shift changes that come in and out of the facility. He also stated they are requesting for this variance due to the type of the building which has little or no windows, the employees cannot see what is outside. He further stated the fence will be behind the vegetation which will serve as a screen and not call attention to the facility.

Dale Carse, representative, stated their choice was to add to an existing facility because they have outgrown their facility on Main and they are in a historic facility which means they are landlocked. This will be their primary data center once the project is completed. The fence will provide security that is highly important to this facility due to this facility housing their security central stations which monitors all the security for HEB, it also the help desk which monitors all the requests if there issues at any of the stores, and it is a data center.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-021 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No A-09-021, variance application for **H.E. Butt Grocery Co.**, subject property description as **Lot 10, Block 4, NCB 17851**, situated at **15103 Huebner Road**, the variance is for a **2-foot variance from the requirement that predominantly open front-yard fences shall not exceed 4 feet in height, in order to erect a predominantly open fence to a height of 6 feet in the front yard**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No A-09-021, application for a variance to the subject property as described above, because the testimony presented to us, and

the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the unique security needs of the applicant HEB Co in regards to the property require the 6-foot fencing in order to operate the property and the security requirement that the applicant needs.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the fencing again is needed for security reasons given the existing "C-2" zoning the applicant could construct a building right up to the property line which in effect would be a fact of fence which is an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **of the notices that were mailed out the applicant or the city did not receive any opposition to the request for the subject variance.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **all building codes would be met and the applicant would be required to build to any city building codes.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **we have seen evidence of 6-foot fences that abut the property line that are conforming on side and back setback lots.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **again the testimony presented before us show the unique security requirements needs of the applicant.** The motion seconded by Mr. Dutmer.

AYES: Ozuna, Dutmer, Camargo, Alejos, Rogers, Britton, Villyard, Victor, Klein, Hardemon, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-09-022

Applicant – Maria P. Zurita
Lots 45 and 46, Block 8, NCB 13959
2143 Herbert Lane
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a Special Exception to relocate a residential structure from 2432 South Loop 410 West to 2143 Herbert Lane.

Michael Farber, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 26 notices were mailed, 1 was returned in favor and none were returned in opposition.

Edgar Dodson, applicant, stated he wants to move a building to replace a structure that burnt. He also stated he is maintaining all setbacks as the site plan shows and plenty of off street parking. He further stated the rear of the house is about 65 foot to the adjoining house in the back, so there is plenty of rear-yard setback, it is going to be on an engineered foundation, and everything will meet all city codes.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-022 closed.

MOTION

A motion was made by **Mr. Villyard**. Regarding appeal No. **A-09-022**, application for a **Special Exception to relocate a residential structure from 2432 South Loop 410 West to 2143 Herbert Lane**, subject property described as **Lots 45 and 46, Block 8, NCB 13959**, also known as **2143 Herbert Lane**, the applicant is **Ms. Maria Zurita**. I move that the Board of Adjustment grant the applicant's request regarding Appeal **A-09-022**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UD 35-399.03. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **it is an upgrade to the neighborhood**. The public welfare and convenience will be substantially served in that **the horizontal siding, gable roof, covered front porches and entrance ways are consistent with the neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **it is consistent if not better than many of the houses in the neighborhood**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought **for the reasons described above**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district **for the reasons stated above**. The motion seconded by **Ms. Dutmer**.

AYES: Villyard, Dutmer, Ozuna, Victor, Rogers, Britton, Hardemon, Alejos, Camargo, Klein, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Board members recessed for lunch.

Mr. Alejos entered the board room at 1:05 p.m.

CASE NO. A-09-023

Applicant – Pura Zavala
Lots 46 and 47, Block 30, NCB 8523
2031 Pyron Avenue
Zoned: “R-6” Residential Single-Family District

The applicant is requesting a special exception to allow a one-operator beauty/barber shop.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 30 notices mailed, 2 were returned in favor and none were returned in opposition.

Pura Zavala, applicant, stated she likes to work from her home. She also stated she only has one customer at a time.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-023 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-09-023**, application for a **special exception to allow a one-operator beauty shop at 2031 West Pyron Avenue, Lots 46 and 47, Block 30, NCB 8523**, the applicant being **Pura Zavala**. I move that the Board of Adjustment grant the applicants request regarding Appeal No **A-09-023**, as stated above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **it has been shown that there has been no violations on the property in the shop**. The public welfare and convenience will be substantially served in that **the shop will serve the people in the neighborhood who have expressly in writing stated that it would be convenient for those people who live in the neighborhood and don’t have cars and have to ride the bus somewhere else in order to have their hair done**. The neighboring property will not be substantially injured by such proposed use in that **adequate parking is available for the one chair shop**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **the shop is contained within the home and does not alter the exterior of the house which is compatible with the neighborhood**. The special exception will not weaken the general purposes of the district or the regulations herein established for the specific district in that **is does not weaken the overall zoning of the area or have a negative impact on the surrounding area**. The hours of operation **will be nine to five, Tuesday thru Saturday, for a total of 40 hours**. The duration of this special exception **will be 4 years**. The motion seconded by **Mr. Hardemon**.

AYES: Rogers, Hardemon, Villyard, Dutmer, Ozuna, Britton, Camargo, Victor, Alejos, Klein, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

AYES: Victor, Dutmer, Alejos, Klein, Rogers, Villyard, Camargo, Gallagher

ABSTAIN: Hardemon, Britton, Ozuna

The December 15, 2008 minutes were approved.

Ms. Rogers made a motion to continue Case No A-09-014 and Case No A-09-018 to the next regularly scheduled meeting on March 2, 2009. Ms. Dutmer seconded the motion and all members voted in the affirmative.

There being no further discussion, meeting adjourned at 1:24 p.m.

APPROVED BY: _____ OR _____
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary

There being no further discussion, meeting adjourned at 1:24 p.m.

APPROVED BY: Michael H. Gallagher OR Paul Klein, Vice-Chair
Michael Gallagher, Chairman

DATE: 3-2-09

ATTESTED BY: [Signature] DATE: 3-3-09
Executive Secretary